

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

KEVIN CHRISTOPHER HANDSAKER,

Petitioner,

v.

**LINCOLN COUNTY, and STATE OF
OREGON**

Respondents.

Case No. 6:18-cv-1757-JR

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Jolie A. Russo issued Findings and Recommendation in this case on November 24, 2020. ECF 43. Judge Russo recommended that the Court deny Respondents’ motions to dismiss Petitioner Handsaker’s Amended Petition (ECF 36 and 38). Judge Russo further recommended that the Court order Handsaker to show cause in writing why the Court should not dismiss his amended petition as untimely and raising claims that Handsaker procedurally defaulted. No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Russo’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Russo’s Findings and Recommendation, ECF 43. The Court **DENIES** Respondents’ motions to dismiss Handsaker’s Amended Petition (ECF 36 and 38). The Court further **ORDERS** Handaker to, within 28 days of this Order, show cause in writing why the Court should not deny his amended petition as untimely and raising claims Handsaker procedurally defaulted.

IT IS SO ORDERED.

DATED this 9th day of December, 2020.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge